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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,216

09/12/2003

Dusan Pavcnik

8627-314

9125

757 7590 10/19/2009
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EXAMINER

LANG, AMY T

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

10/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/662,216	Applicant(s) PAVCNİK ET AL.	
	Examiner AMY T. LANG	Art Unit 3731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3,8-18,20 and 22-44.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Anhtuan T. Nguyen/
 Supervisory Patent Examiner, Art Unit 3731

/Amy T Lang/
 Examiner, Art Unit 3731

Continuation of 3. NOTE: Claims 10, 12, 13, 16, 22-24, 27, 34, 37, and 40 comprises new limitations that require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the filter of Yassour does not comprise a plurality of divergent legs and defines "divergent" as to go or move in different directions from a central point. However, the filter of Yassour comprises separate struts (that form a netting material). As shown in Figure 3B, these struts initially move in opposite directions from a central point. Additionally, "divergent" is also defined as differing from another. As shown in Figure 3B of Yassour, the struts differ from one another to form the produced netting. Applicant then argues that Yassour fails to show a second attachment member separate from but attached to the stent. As shown in Figure 6A, the narrowed portion (109) is separate from the stent since it comprises a different structure than the remainder of the stent and is used for a separate function. Applicant argues that this would be analogous to calling the wider portion of Applicant's filter as separate from the narrow portion of the filter. However, as shown in Figure 6 of Applicant's disclosure, the narrow and wide portions of the filter create a smooth transition between the two. Conversely, the narrowed portion (109) of the Yassour stent is formed with an abrupt change in dimension. Additionally, "separate" is defined as to divide into individual units. It is the Examienr's position that one can easily divide the Yassour filtering device into the stent and the narrowed portion since each comprise different units. Lastly, Applicant argues that the combination of Yassour and DeVries is improper since the device of Yassour is made of fine wire so there would be no reason to provide a lumen, with an attachment wire disposed within, through such fine wire. However, DeVries teaches an advantageous attachment mechanism that would enhance the Yassour device. Such attachment mechanism provides a more secure attachment while still allowing it to become displaced from the rest of the device. Additionally, different wire materials and wire diameters are well known in the art.